LEASE BY TESTAMENTARY TRUSTEE—DURATION.—Lands were devised to H., with power to sell, in order to provide for the maintenance of his children and himself during his life; at the death of H., the remaining property was to be divided between the surviving children. H. executed a lease upon the lands of the estate, and died shortly thereafter. *Held,* the lease does not expire upon his death, and the rights of a transferee of the rent notes are superior to those of the remainderman. *Hines* v. *McCombs et al.* (1907),— Ct. App. Ga. —, 58 S. E. Rep. 1124.

Where land was conveyed in trust for the life of the beneficiary, and on her death was to be divided, a lease of the property was held to terminate on the expiration of the trust at the beneficiary's death. *In the Matter of McCaffrey,* 50 Hun 371. In *Gomez* v. *Gomez,* 147 N. Y. 195, the trust was for the life of G., and a lease executed by a trustee was held to terminate on the death of G. In the principal case, however, it would seem that the trustee H. took the legal estate in fee, determinable upon his death, which marked the duration of the trust. Since the trustee has the fee, he has power to make any reasonable lease. In *Greason* v. *Keteltas,* 17 N. Y. 491, the court said, "If the trustees have a fee determinable upon a contingent event, they nevertheless have power to make a lease to extend beyond their interest in the land." Contra, *Bergengren* v. *Aldrich,* 139 Mass. 259, where lands were devised in trust to continue until A.'s death, and the trustee was empowered to sell and convey in fee, or less estate, any or all of the land. It was held that neither the interest of the trustee nor the power of sale gave him any authority to bind the remaindermen by a covenant of renewal in a lease of the trust lands. Lands were devised in trust during the life of A., the trustee being empowered to rent the lands for any term of years. The trustee was held to have no power to lease the realty for a period extending beyond the duration of the original trust estate. *Matter of City of New York,* 81 App. Div. (N. Y.) 27. There are few authorities as to whether a trustee can give a lease to extend beyond the period of his trust estate, but it would seem that he could not. A trustee's estate is a defeasible one, and to allow him to execute a lease not determinable upon the contingency which ends the trust, would allow him to grant a larger estate than he himself has. See, generally, PERRY ON TRUSTS, §§ 528-530; UNDERHILL ON TRUSTS, pp. 347-348.

MASTER AND SERVANT—INJURY TO SERVANT—VICE-PRINCIPAL NEGLIGENT.—Where it appeared that the general foreman in charge of the work of excavation for the foundation of a building directed a blasting crew to go to another part of the foundation, and directed a certain workman to clear the ice and snow out of a hole which had been drilled in the rock, by other workmen, and this workman was injured by the explosion of a charge of dynamite which had been left there unexploded, when the charge in a former group of holes had been discharged by means of an electric battery. *Held,* that the foreman was a vice-principal and charged with the absolute duty to exercise proper care to provide a reasonably safe place for the employees to work in, and that it was for the jury to say whether in this instance the foreman exercised ordinary care in making a reasonable examination in order to

ascertain the existence of an unexploded charge. *Carlson* v. *James Forrestal Co.* (1907), — Minn. —, 112 N. W. Rep. 626.

It is interesting to compare this case with that of *Peters et al.* v. *George* (1907), — C. C. A. (3rd Cir.) —, 154 Fed. 634 (6 MICH. LAW REV. 181). The latter case was decided in the federal court May 13, 1907, while the present case was decided July 5, 1907. The facts are practically identical in both cases. A common laborer was ordered by his foreman to dig out an unexploded charge of dynamite from a hole drilled in the rock, and received permanent injuries in so doing. Both cases arrived at the same result; in each the employer is held liable. The lines of reason, also, although nominally different, are brought very close together. The Minnesota case follows the vice-principal rule. Judge ELLIOTT says, "Thomas (i. e., the foreman) was a vice-principal and not a fellow-servant; if he failed to perform the absolute duty to exercise proper care to furnish a reasonably safe place for the employees to work, the master is responsible for the damages resulting thereby." Judge GRAY, in the federal case, after noting that much argumentation had been devoted as to whether the foreman was a vice-principal or a fellow-servant, says as follows: "While at one time the so-called theory of vice-principal was much resorted to in working out the liability of a master for injuries to an employee incurred in his service, it has, subsequently to the decision of the *Ross case,* 112 U. S. 377, been largely discarded, at least in the federal courts * * *. Therefore, in the language of the opinion just referred to [i. e., Justice BREWER, in *B. & O. R. R. Co.* v. *Baugh,* 149 U. S. Rep. 368], it will be seen that the question turns rather on the character of the act than on the relation of the employees to each other." The reasoning of these two cases is certainly very closely allied. Perhaps the idea suggested by Professor Kales in his article on *"The Fellow-Servant Doctrine in the United States Supreme Court,"* 2 MICH. LAW REV. 79 (Nov., 1903), is working its way into the state courts, and they are also approaching the whole matter from the point of view of the master's legal duty.

MASTER AND SERVANT—TORTS OF SERVANT—LIABILITY OF OWNER OF AUTOMOBILE FOR CHAUFFEUR'S NEGLIGENCE.—The defendant, while on a business trip in an automobile, made his headquarters at a hotel, the automobile being kept in a garage several blocks away. On the evening of the accident, on arriving at the hotel, the defendant, after telling the chauffeur that he was going out in the machine that night, directed him to go down stairs in the hotel and get oil. Instead of obeying this instruction literally the chauffeur drove the automobile to the garage for the oil, and while on his way there the collision occurred. *Held,* that whether the chauffeur was acting within the general scope of his authority was properly submitted to the jury, although in this particular instance the use of the machine was in disobedience of the literal instruction of the master. *Bennett* v. *Busch* (1907), — N. J. L. —, 67 Atl. Rep. 188.

Cases concerning the relation existing between a chauffeur and his employer are becoming of more frequent occurrence with the growing use of the automobile. The rule is universally accepted that the master is respon-